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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

JULIE A. GOLDBERG,

Plaintiff and Appellant,

v.

ELITE COLLATERAL RECOVERY, INC.,

Defendant and Respondent.

B237612

(Los Angeles County
Super. Ct. No. LC093589)

APPEAL from an order of the Superior Court of Los Angeles County, Huey P. Cotton, Judge. Affirmed.

Julie A. Goldberg, in pro. per., for Plaintiff and Appellant.

Farmer Case Hack & Fedor, Anthony T. Case, and Michele M. Angeles for
Defendant and Respondent.

Plaintiff Julie A. Goldberg (Goldberg) is a California attorney apparently living and practicing law, on at least a part-time basis, in New York. In March 2011, defendant Elite Collateral Recovery, Inc. (Elite) repossessed Goldberg's car in New York and towed it to New Jersey. Goldberg sued Elite and others in California for a variety of torts arising out of the repossession; Elite moved to quash service of the summons and complaint on the grounds that it lacked "minimum contacts" with the State of California. The trial court entered an order granting the motion to quash, from which Goldberg appeals. We affirm.

BACKGROUND

I. Complaint

Goldberg filed the present action against Wells Fargo Dealer Services (Wells Fargo)¹ and Elite on May 10, 2011. The complaint alleged that Wells Fargo is a California corporation with its principal place of business in San Francisco, California, and that Elite is a New Jersey corporation "operating under and enjoying the rights and privileges of the State of California." On May 12, 2010, Goldberg purchased a car from East Side Auto Sales (dealer). She made a down payment on the car and financed the balance of the purchase price through the dealer, who subsequently sold the sales contract to Wells Fargo. Goldberg had the car delivered to her home in Bronx, New York, and timely made all payments due until January 2011.

Beginning in July 2010, Goldberg requested that Wells Fargo perfect title to the car so she could register it. Wells Fargo failed to do so. Goldberg thus put a hold on payments until Wells Fargo perfected title. On about March 25, 2011, the dealer informed Goldberg that Wells Fargo agreed to perfect title in Goldberg and was ordering a new title document. On the basis of that representation, Goldberg made all held payments on the vehicle in full.

¹ Wells Fargo, with whom Goldberg says she has settled, is not a party to this appeal.

On March 26, 2011, although Goldberg's account with Wells Fargo was current, an agent of Elite entered Goldberg's apartment building in New York and demanded that the doorman give him the key to Goldberg's car. When the doorman said he did not have the key, Elite's agent went to Goldberg's garage and began to chain the car to a pickup truck. Goldberg's assistant arrived and showed Elite's agent proof of payment on the car, but the agent refused to accept the proof of payment. He towed the car out of the garage and into New Jersey, causing extensive damage to the car's antilock brake system and transmission. Goldberg's personal property in the car has not been returned to her, and she has not been served with a notice of seizure informing her of the car's location.

As against Elite, Goldberg alleged causes of action for negligence and conversion. She sought compensatory and punitive damages and costs of suit.

II. Elite's Motion to Quash Service of Summons

On July 29, 2011, Elite specially appeared and filed a motion to quash service of summons, asserting that it did not have "minimum contacts" with California and, thus, California could not constitutionally exercise jurisdiction over it.² The motion asserted that Elite is a tow-truck company that operates in New York and New Jersey. The "controversy" between Elite and Goldberg was asserted to arise out of the repossession of Goldberg's car in New York and the car's subsequent transport to New Jersey. Further, "Plaintiff does not allege any conduct of ELITE that took place in California or any contact between ELITE and the State of California. . . . Plaintiff does not allege any activities by ELITE in California, or directed to California or its residents, to establish such nexus."

In support of the motion to quash, Elite filed the declaration of Max Piniero, Elite's president and chief executive officer. Piniero declared: "I reside in and am a citizen of New Jersey; ELITE is a New Jersey corporation, with its principal place of business at 727 Livingston Street, Elizabeth, New Jersey 07201. This is the address

² Simultaneously, Elite filed a motion to dismiss for inconvenient forum.

where Plaintiff served ELITE with the Summons and Complaint. ELITE does not and has not done business in the State of California. ELITE does not and has not owned real or personal property in the State of California. ELITE does not have any offices in the State of California and does not employ any persons within the State of California. [¶] . . . ELITE has not and does not consent to . . . jurisdiction in the State of California.”

Goldberg opposed the motion. She asserted that Elite had a corporate office in New Jersey and a southern headquarters in Florida, and had put itself into the nationwide stream of commerce via internet marketing. Elite’s website indicated that Elite was a member of Time Finance Adjusters, a nationwide database of repossession agents from which financial institutions can search and hire such companies, and Elite’s LinkedIn profile indicated that Elite was associated with nationwide repossession groups and databases that made its name available to companies seeking to repossess property out of state. Elite’s president was featured in a CNN segment aired in October 2003, in which Pineiro said that his company could track down cars anywhere in the United States.

Goldberg conceded that she purchased the car in Idaho, but said (without any evidentiary support) that registration paperwork was completed for the car to be registered and garaged in California. Since the car was in Virginia, it was delivered to New York, where Goldberg was temporarily living. Elite was “retained by an auto finance company based in California.” Several witnesses to the repossession were located outside of New York (in California and the Philippines), and “there are numerous other witnesses in California.”³

In support of her motion, Goldberg attached four exhibits: (1) a printout of Elite’s website; (2) Elite’s LinkedIn profile; (3) a transcript of a CNN segment featuring Elite; and (4) a printout of Time Finance Adjusters’ website. However, none of these documents was authenticated.

³ Goldberg’s opposition asserted that California courts may exercise both “general” and “specific” jurisdiction over Elite, but included no argument concerning general jurisdiction.

Elite objected to Goldberg's evidence on grounds that the exhibits were not authenticated.

III. Order Quashing Service of Summons

The superior court granted the motion. Its minute order stated as follows: "The Court finds that there is no general jurisdiction over the specially appearing defendant, Elite[,] because there is no substantial, continuous and systematic contact between Elite and California. *Vons, Cos., Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 446. Defendant has no offices nor employees in California.

"As to specific jurisdiction, the nonresident defendant must have 1) purposely availed himself of the benefits of California, 2) the controversy must be related to/have a nexus with the defendant's contacts with California and 3) the exercise of jurisdiction must comport with fair play and substantial justice. *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 477-478.

"Here, the defendant did not purposely avail itself of the benefits of California simply by having a website and being featured on television. Unlike the defendants in *Snowney v. Harrah's Entertainment Inc.* (2005) 35 Cal.4th 1054 who directed a wide variety of heavy advertisement to California residents in the hopes of enticing them to visit Las Vegas, aside from one television interview that was not specifically directed at California residents, there is no evidence of heavy or intensive advertising by Elite in California. The Elite website also appears passive and not actively directed at California residents.

"As to the nexus between the contacts and the suit, there is no real connection. There is no evidence that Elite was contracted to perform repossession services because of any contact with California but probably because the car was located in NY. Similarly, defendant Wells Fargo, the entity that ordered the repossession, has offices all over the country and not only in California. Defendant has no physical presence in California and the controversy took place in New York and New Jersey. Therefore unlike *Snowney, supra*, where that plaintiff's suit against Harrah's for failing to provide

notice of a hotel room energy surcharge arose specifically from Harrah's purposeful availment and advertising to California residents, the case at bar does not evidence an adequate nexus.

"Lastly and perhaps more importantly, the exercise of personal jurisdiction would not be reasonable and would not amount to substantial justice. There is no dispute that plaintiff, an attorney, maintains a business address and practices law in New York, where the repossession occurred. There is no injustice to plaintiff if the Court does not assert personal jurisdiction.

"For the reason[s] stated, the Court grants the motion to quash service of summons and complaint for lack of personal jurisdiction.

"The objections to the plaintiff's evidence, exhibit[s] A-D, are sustained." (Italics added.)

The trial court entered judgment, and notice of entry of judgment was filed December 28, 2011. Goldberg timely appealed.

DISCUSSION

Goldberg asserts that the trial court erred in concluding that it could not constitutionally exercise personal jurisdiction over Elite. For the following reasons, we disagree.

I. Standard of Review

When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden to prove, by a preponderance of the evidence, facts justifying the exercise of jurisdiction. Once the plaintiff establishes facts showing minimum contacts with the forum state, it becomes the defendant's burden to demonstrate that the exercise of jurisdiction would be unreasonable. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444-449 (*Vons Companies*); *Anglo*

Irish Bank Corp., PLC v. Superior Court (2008) 165 Cal.App.4th 969, 980 (*Anglo Irish Bank*).)

If there is no conflict in the evidence, the question whether a defendant's contacts with California are sufficient to justify the exercise of personal jurisdiction in this state is a question of law that we review de novo. If there is a conflict in the evidence underlying that determination, we review the trial court's express or implied factual findings under the substantial evidence standard. (*Vons Companies, supra*, 14 Cal.4th at pp. 444-448; *Anglo Irish Bank, supra*, 165 Cal.App.4th at p. 980.) Here, although the parties dispute their opponents' characterization of the facts, there is no material conflict in the evidence itself; thus, our review is de novo.

II. "Minimum Contacts"

The California Supreme Court described the contacts necessary for the exercise of jurisdiction over an out-of-state defendant in *Vons Companies, supra*, 14 Cal.4th at pages 444-446, as follows:

"California's long-arm statute authorizes California courts to exercise jurisdiction on any basis not inconsistent with the Constitution of the United States or the Constitution of California. (Code Civ. Proc., § 410.10.) A state court's assertion of personal jurisdiction over a nonresident defendant who has not been served with process within the state comports with the requirements of the due process clause of the federal Constitution if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate "'traditional notions of fair play and substantial justice.'" (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 . . . ; see also *Burnham v. Superior Court* (1990) 495 U.S. 604, 618-619 (*Burnham*).)

"Recent decisions of the United States Supreme Court describe two bases for limiting a state's exercise of personal jurisdiction over nonresidents. The first recognizes limits on a state's assertion of jurisdiction designed to ensure fairness to nonresident defendants. The second recognizes the mutual limits on the state's sovereign power to exercise jurisdiction in a federal system.

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“Personal jurisdiction may be either general or specific. A nonresident defendant may be subject to the *general* jurisdiction of the forum if his or her contacts in the forum state are ‘substantial[,] . . . continuous and systematic.’ (*Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437, 445, 446; see also *Helicopteros Nacionales de Columbia v. Hall* (1984) 466 U.S. 408, 414-415 (*Helicopteros*)). In such a case, ‘it is not necessary that the specific cause of action alleged be connected with the defendant’s business relationship to the forum.’ (*Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147 . . . ; see also *Helicopteros, supra*, 466 U.S. at p. 414.) Such a defendant’s contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction. (See *Burnham, supra*, 495 U.S. at p. 618 (plur. opn. by Scalia, J.)) . . .

“If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she still may be subject to the *specific* jurisdiction of the forum, if the defendant has purposefully availed himself or herself of forum benefits (*Burger King, supra*, 471 U.S. at pp. 472-473), and the ‘controversy is related to or “arises out of” a defendant’s contacts with the forum.’ (*Helicopteros, supra*, 466 U.S. at p. 414; see also *Burger King, supra*, 471 U.S. at p. 472.) . . .

“The United States Supreme Court has described the forum contacts necessary to establish specific jurisdiction as involving variously a nonresident who has ‘purposefully directed’ his or her activities at forum residents (*Burger King, supra*, 471 U.S. at p. 472), or who has ‘purposefully derived benefit’ from forum activities (*id.* at p. 473), or “‘purposefully avail[ed himself or herself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’” (*Id.* at p. 475.) The court also has referred to the requisite forum contact as involving a nonresident defendant who “‘deliberately” has engaged in significant activities with a State [citation] or has created “continuing obligations” between himself and residents of the forum [citation]’ (*id.* at pp. 475-476), concluding that in such cases the defendant ‘manifestly has availed himself of the privilege of conducting business [in the forum], and because

his activities are shielded by “the benefits and protections” of the forum’s laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.’ (*Id.* at p. 476.)”

III. Goldberg Failed to Demonstrate That California Courts May Constitutionally Exercise Personal Jurisdiction Over Elite

Goldberg does not assert that Elite has such substantial, continuous, and systematic contact with the State of California as to warrant a finding of general jurisdiction. Instead, she asserts that Elite’s contacts with California are sufficient to establish specific jurisdiction. Specifically, she contends that (1) Elite “purposefully availed” itself of the privilege of conducting business in California; (2) there is a nexus between the controversy and Elite’s contacts in California; and (3) the exercise of jurisdiction over Elite “comports with the notions of fair play and substantial justice.” For the following reasons, we disagree.

As we have said, when a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating *facts* justifying the exercise of jurisdiction. Goldberg has failed to do so. In opposition to Elite’s motion to quash, Goldberg submitted four documents that she contended were evidence of Elite’s purposeful availment of the privilege of conducting business in California. *None* of these documents was authenticated, and the trial court thus properly sustained Elite’s objection to their admission. (*Thorstrom v. Thorstrom* (2011) 196 Cal.App.4th 1406, 1418 [“Generally speaking, documents must be authenticated in some fashion before they are admissible in evidence.”]; *McAllister v. George* (1977) 73 Cal.App.3d 258, 262 [“Had plaintiff merely offered the exhibit into evidence without providing any testimony to authenticate it, the document would not have been admissible. [Citation.] ‘We understand that in some legal systems it is assumed that documents are what they purport to be, unless shown to be otherwise. With us it is the other way around.’”].) As a result, there was no admissible evidence on which the trial court could have found the minimum contacts necessary to establish personal jurisdiction.

Even if the exhibits had been admissible, they still would not have established a basis for the court's exercise of jurisdiction over Elite. To establish specific jurisdiction over a nonresident defendant, a plaintiff must establish, among other things, that the plaintiff's cause of action "arises out of or has a substantial connection with a business relationship defendant has purposefully established with California." [Citation.] . . . [I]f . . . the defendant's activities are not so wide ranging as to justify general jurisdiction, 'then jurisdiction depends upon the quality and nature of his activity in the forum *in relation to* the particular cause of action. In such a situation, the cause of action must arise out of an act done or transaction consummated in the forum, or defendant must perform some other act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws. . . . The crucial inquiry concerns the character of defendant's activity in the forum, whether the cause of action *arises out of or has a substantial connection* with that activity, and upon the balancing of the convenience of the parties and the interests of the state in assuming jurisdiction.'" (*Vons Companies, supra*, 14 Cal.4th at p. 448.)

In the present case, the documents on which Goldberg relies do not establish that her causes of action against Elite "arise[] out of or ha[ve] a substantial connection with" Elite's alleged activities in California. At most, they suggest that Elite maintained a website that could be accessed from California, and that Elite was a member of a nationwide repossession database. The documents do *not* establish, however, either that Wells Fargo hired Elite from California or that the car was repossessed in California. Goldberg thus failed to establish the necessary connection between Elite's alleged contacts with California and her causes of action.

Goldberg asserts in her appellant's opening brief that she "financed her vehicle through Wells Fargo Dealer Services in California," "[a]ll communications and transactions related to this financing were transacted out of California," and "Wells Fargo Dealer Services, through their offices in California, and based on the advertising of the Defendant, retained the services of the Defendant in New York." Goldberg's sole citation to the record in support of these facts, however, is to her own complaint. Her

unsupported allegations manifestly do not satisfy her burden “to *prove*, by a preponderance of the evidence, facts establishing purposeful availment and a substantial connection between the defendant’s forum contacts and the plaintiff’s claim.” (*Anglo Irish Bank, supra*, 165 Cal.App.4th at p. 980, italics added.)⁴

For all of these reasons, Goldberg has failed to show the requisite contacts between her causes of action against Elite and Elite’s alleged activities in California. The trial court did not err in granting Elite’s motion to quash.

DISPOSITION

The order granting Elite’s motion to quash service of summons is affirmed. Elite is awarded its costs on appeal.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.

⁴ Ironically, in her appellant’s reply brief, Goldberg takes Elite to task for failing to “offer[] any evidence in support of their statements.”